

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**MICHAEL J. THOMPSON, et al.,**

Plaintiffs,

**Case No. 10-C-1078**

**-vs-**

**RETIREMENT PLAN FOR EMPLOYEES  
OF SC JOHNSON & SON, Inc., et al.,**

Defendants.

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**DECISION AND ORDER**

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This matter is related to another action currently pending on appeal to the Seventh Circuit. *Thompson v. Retirement Plan for Employees of S.C. Johnson & Son, Inc.*, Case No. 07-CV-1047-JPS (E.D. Wis.) (“*Thompson I*”). In *Thompson I*, Judge Stadtmueller ruled that one of the plaintiffs’ claims was waived. After Judge Stadtmueller’s ruling, but before filing a notice of appeal, the plaintiffs filed the waived claim in the instant lawsuit. The defendants moved to dismiss the instant lawsuit as barred by *res judicata*.

Instead of responding to the defendants’ motion to dismiss, the plaintiffs moved to stay their own lawsuit. Incredibly, the plaintiffs argue that this matter should be stayed for the following reason: “If the Court of Appeals agrees with Plaintiffs and either resolves this issue (either for or against Plaintiffs) *or* sends it back to the *Thompson I* court to resolve, this action (and Defendants’ motion to dismiss) will be unnecessary and/or moot.” Taking the plaintiffs at their word, the Court must question why the instant lawsuit was filed in the first

instance. The plaintiffs chose to simultaneously (1) attempt to overturn Judge Stadtmueller's waiver ruling in the Seventh Circuit and (2) bring the waived claim in a collateral proceeding. The plaintiffs cannot now complain that the instant proceedings could be rendered moot when they created this situation pursuant to their own litigation strategy.

The motion to stay [D. 19] is **DENIED**.

Dated at Milwaukee, Wisconsin, this 18th day of January, 2011.

**SO ORDERED,**

*s/ Rudolph T. Randa*  
**HON. RUDOLPH T. RANDA**  
**U.S. District Judge**